Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 79-2009

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

MELVIN E. LEVINSON,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari to the Appellate Court for the First Judicial District, Illinois

RESPONDENT'S BRIEF IN OPPOSITION

TYRONE C. FAHNER,
Attorney General,
State of Illinois,

MELBOURNE A. NOEL, JR.,
THOMAS E. HOLUM,
JACK DONATELLI,
Assistant Attorneys General,
188 W. Randolph St. (Suite 2200),
Chicago, Illinois 60601,
(312) 793-2570,

Counsel for Respondent.

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QUESTION PRESENTED

Whether the petitioner demonstrated an issue or question of fact worthy of review by this court where:

a) the contemptuous act occurred within the statutory period of limitation;

b) the petitioner has no standing to object to the use of evidence first obtained by a properly conducted grand jury investigation.

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RESPONDENT'S BRIEF IN OPPOSITION

The respondent respectfully requests that this court deny the petition for writ of certiorari to review the judgment of the Appellate Court of Illinois insofar as petitioner's issue does not raise a question of constitutional proportion that is worthy of review.

OPINION BELOW

The opinion of the Appellate Court of Illinois is reported in *People* v. *Levinson,* 75 Ill. App.3d 428, 394 N.E.2d 509 (1st Dist. 1979) and has been submitted to this Court in Appendix I of the Petition for Writ of Certiorari. It is, therefore, not contained in this Brief in Opposition. A petition for leave to appeal to the Illinois Supreme Court was denied on March 27, 1980, and this denial appears in Appendix III of the Petition for Writ of Certiorari.

JURISDICTION

The jurisdiction of the court is invoked under 28 U.S.C. 1257 (3).

STATEMENT OF THE CASE

On May 25, 1976, the petitioner was found guilty of criminal contempt. His direct appeal was denied by the Illinois Appellate Court, First District, on August 13, 1979. On March 27, 1980, the Illinois Supreme Court denied his petition for leave to appeal. He now seeks review from this court.

REASON FOR DENYING THE WRIT

THE PETITIONER DID NOT DEMONSTRATE ANY ISSUE OR QUESTION OF FACT WORTHY OF REVIEW BY THIS COURT.

Petitioner asks this Court to review his conviction for criminal contempt, claiming that the statute of limitations barred the prosecution of that offense and that documentary evidence was improperly admitted at trial because it had been obtained by a grand jury. However, these claims are unworthy of review by this Court.

Although a petitioner may raise an issue of constitutional law, this Court will generally not grant certiorari unless that issue is novel, unsettled, or deserving of further consideration, nor will this Court grant certiorari merely to reveiw the evidence and discuss the specific facts. *United States* v. *Johnston,* 268 U.S. 220, 227 (1925). Review is discretionary and depends on many factors other than the perceived correctness of the judgment below. *Ross* v. *Moffit,* 417 U.S. 600, 617 (1974). Where the state court's findings are supported in fact, this Court will accept them. *Lloyd A. Fry Roofing Co.* v. *Wood,* 344 U.S. 157, 160 (1952).

Examination of the petition reveals that there is nothing exceptional about the issues and the facts presented therein. The issues have already been well-settled in law and the facts fully support the conviction.

a) The Contemptuous Act Occurred Within The Statutory Period Of Limitation.

Petitioner claims that the action for criminal contempt was barred under Illinois law by a three year statute of limitation since the last act of the offense was complete when the purported final accounting was filed on January 6, 1970, but the petition for a rule to show cause was not filed until February 5, 1973.

The evidence disputes this claim, however, and reveals that the petitioner performed numerous acts in furtherance of his scheme to obstruct the administration of justice and embezzle over $130,000.00 from the estate well past January 6, 1970:

1) The final accounting stated that petitioner had paid over $28,000 in federal taxes although, in fact, he had not. Nonetheless, in September 1971, the petitioner, knowing he had not paid these taxes, represented to the court, simply, that certain IRS matters had not yet been resolved.

2) In 1970, after the final accounting, the petitioner failed to turn over various documents concerning the decedent's estate to interested parties.

3) In 1971, the petitioner failed to comply with the requests of the administration de bonis non to turn over certain estate documents.

4) After the final accounting, the petitioner failed to report misstatements and to restore the estate funds.

The Appellate Court found that these facts demonstrated petitioner's scheme to obstruct the administration of justice, a scheme that extended well past the date of the filing of the purported final accounting.

Under Illinois law, the statute of limitations begins to run at the time when the last act of the offense is committed. *People* v. *Haycraft,* 31 Ill. App.3d 974, 278 N.E.2d 877 (5th Dist. 1972); Ill. Rev. Stat. 1979, ch. 38, § 3-8. This rule mirrors the federal rule. *See United States* v. *Portner,* 462 F.2d 678 (2d Cir. 1972); *United States* v. *Charney,* 537 F.2d 341 (9th Cir. 1976); *United States* v. *Nowak,* 448 F.2d 134 (7th Cir. 1971). In light of the facts outlined above, it is clear that prosecution was initiated well within the ambit of the applicable statute of limitations.

Petitioner contends that the holdings in *Prendergast* v. *United States,* 317 U.S. 412 (1943) and *Beattie* v. *People,* 33 Ill. App. 651 (1889) control here. But the facts in these cases are different. In *Prendergast,* the alleged contemptuous misrepresentations to the court were not made within the period of limitation, neither within three years after the filing of the information nor within three years after the court made its inquiry. *Prendergast,* 317 U.S. at 420. Likewise, in *Beattie,* the contemptuous act was a specific one, not a continuing one, and did not take place within the period of limitation. In the instant case, however, the misrepresentations and other acts did in fact occur within the three year limitation period.

Petitioner also contends that these later acts have nothing to do with the offense since he was charged with filing false accounts and misappropriating estate funds. However, petitioner was charged with contempt of court, and the acts of false filing and misappropriating, as well as the later acts, each demonstrate his contemptuous conduct as contemplated in Illinois: behavior that hinders, delays, or impedes the administration of justice, interferes with the judicial process, or embarrasses the court and lessens its dignity and authority. *People ex rel. Kuncė* v. *Hogan,* 67 Ill.2d 55, 364 N.E.2d 50, 53 (1977). Federal courts define contempt, similarly, as wilful disregard or disobediance of public authority, an obstruction of the administration of justice. *In Re Allis,* 531 F.2d 1391, 1392 (9th Cir. 1976); *United States* v. *Seale,* 461 F.2d 345, 369 (7th Cir. 1972); *United States* v. *Profffitt,* 498 F.2d 1124, 1128 (3rd Cir. 1974).

The issue of law presented here is neither novel nor unsettled. The appellate's court's findings are fully supported by the record. This Court should dismiss the petition.

b) The Petitioner Has No Standing To Object To The Use Of Evidence First Obtained By A Properly Conducted Grand Jury Investigation.

The petitioner claims that the documentary evidence obtained by the grand jury should not have been used against him at the contempt proceeding. This claim is without merit.

During the contempt proceedings, a grand jury investigated the events surrounding the decedent's estate. Afterwards, numerous documents which had been subpoenaed by the grand jury were introduced at the contempt proceedings. These documents included records of the petitioner's and his father's personal bank accounts opened ostensibly for the decedent's estate, as well as other papers directly connected with the estate.

The facts make clear that petitioner has no possessory interest in this evidence seized and therefore no standing to complain of its use at trial. *Brown* v. *United States,* 411 U.S. 223 (1973); *People* v. *French,* 33 Ill.2d 146, 210 N.E.2d 540 (1965) The record supports the appellate court's finding that documents were the possessions of the decedent's estate which came into the hands of the petitioner and his father only in their respective capacities as attorney and administrator of the estate and without question, the same documents could have been produced at trial absent any grand jury subpoena.

Similarly, petitioner was not denied his privilege against self-incrimination. Because he was only custodian of these records by virtue of his involvement in the decedent's estate, he cannot claim this constitutional privilege. *Bellis* v. *United States,* 417 U.S. 85 (1975); *People* v. *Ryan,* 25 Ill.2d 233, 184 N.E.2d 853 (1962)

The petitioner's claim that there was an abuse of the grand jury since it acted without jurisdiction and with the purpose of discovering facts for the contempt action is equally without merit. A grand jury has broad powers to investigate whether a

crime has been committed and whether criminal proceedings should be instituted against any person. *United States* v. *Calandra,* 414 U.S. 338 (1974) It is not narrowly confined in its objectives. *United States* v. *Doe,* 445 F.2d 1270, 1274 (1st Cir. 1972) Even when a grand jury produces evidence but does not return an indictment, that is insufficient to embargo its fruits. *United States* v. *Doe,* 455 F.2d 1270, 1275 (1st Cir. 1972) Unless there is a compelling showing of the probability of abuse, a total review of the proceedings is not warranted. *United States* v. *Doe,* 455 F.2d 1270, 1275 (1st Cir. 1972) *See also United States* v. *Bukowski,* 435 F.2d 1094, 1104 (7th Cir. 1970) where the court rejected a claim of grand jury abuse although evidence uncovered by the grand jury was used in a separate contempt action.

In the instant case, the appellant court could find no evidence to suggest that the grand jury investigation was instituted in bad faith (*See People* v. *Polk,* 21 Ill. 2d 594, 174 N.E.2d 393 (1961), or that grand jury secrecy was violated. *See People* v. *Johnson,* 31 Ill.2d 602, 203 N.E.2d 399 (1964). The grand jury had the power to investigate the petitioner's dealings with the decedent's estate but was not required to return an indictment.

Therefore, the petitioner has no constitutional basis on which to object to the evidence used at the contempt proceeding. The facts supporting the conviction are clear and the issues of law are well settled. This court should dismiss the petition.

CONCLUSION

For the foregoing reasons, the People of the State of Illinois respectfully ask that this Court deny the petition for writ of certiorari.

Respectfully submitted,

TYRONE C. FAHNER,
Attorney General,
State of Illinois,

MELBOURNE A. NOEL, JR.,
THOMAS E. HOLUM,
JACK DONATELLI,
Assistant Attorneys General,
188 W. Randolph St. (Suite 2200),
Chicago, Illinois 60601,
(312) 793-2570,

Counsel for Respondent.